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**Notice of Allowability**

Application No.

10/824,740

Examiner

Carl H. Layno

Applicant(s)

FABIAN ET AL.

Art Unit

3766

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Papers filed September 12, 2006.
2. ☒ The allowed claim(s) is/are 1, 2, 5, 6, 8, 9, and 11-16.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 5. <input type="checkbox"/> Notice of Informal Patent Application                      |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|  | 9. <input type="checkbox"/> Other _____.   |

### **DETAILED ACTION**

1. Acknowledgment is made of applicant's amendment, which was received by the Office on September 12, 2006.

2. Claims 3, 4, 7, and 10 are canceled. Claims 12-16 have been added. Claims 1, 2, 5, 6, 8, 9, and 11-16 are active and pending.

#### ***Claim Rejections - 35 USC § 102***

3. In view of applicant's claim cancellations (claims 7 and 10) and submission of a 37 CFR 1.131 affidavit w/evidence, the Examiner is withdrawing the 35 U.S.C 102 rejections based upon the Teller et al (US 2002/0019586-A1), Combs et al (US 5,957,861), and Warkentin et al (US 6,471,645) references, which were made against claims 1, 2, 6, 7, and 9-11 in the last Office action.

#### ***Allowable Subject Matter***

4. Claims 1, 2, 5, 6, 8, 9, and 11-16 are allowed.

#### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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The Bergelson et al (US 5,467,773), Bui et al (US 6,398,727), and Webb et al (US 6,599,250) patents all recite systems including wired/wireless communications among a patient device, a home monitor, and a remote station. Unlike applicant's device, none of these permits the input of lifestyle information, food data, or patient health information by manual entry, in the manner claimed by the applicant.

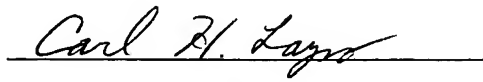
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in cursive script, reading "Carl H. Layno", is written over a horizontal line.

CARL LAYNO  
PRIMARY EXAMINER

CHL  
11/03/2006